

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MARY JANE WAGGONER

Claimant

VS.

THE BOEING COMPANY

Respondent

AND

INSURANCE COMPANY

STATE OF PENNSYLVANIA

Insurance Carrier

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Docket No. 1,001,815

ORDER

Respondent and its insurance carrier appealed the June 3, 2004 Award entered by Administrative Law Judge John D. Clark. The Board heard oral argument on September 21, 2004.

APPEARANCES

Alexander B. Mitchell, II, of Wichita, Kansas, appeared for claimant. Kim R. Martens of Wichita, Kansas, appeared for respondent and its insurance carrier (respondent).

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award. In addition, at oral argument to the Board, the parties agreed claimant would be entitled to receive permanent partial general disability benefits for an 11 percent whole body functional impairment, if the Board should find claimant is entitled to receive disability benefits for a neck injury only. And claimant's attorney also advised the Board that no claim was being made for headaches.

ISSUES

Claimant filed this claim alleging she injured her neck on March 6, 2000, while working for respondent. In the June 3, 2004 Award, Judge Clark awarded claimant benefits for an 11 percent permanent partial general disability for the alleged neck injury.

The Judge specifically found claimant's carpal tunnel syndrome was not caused by the March 6, 2000 accident.

Respondent contends Judge Clark erred. Respondent argues that claimant also developed carpal tunnel syndrome due to the March 6, 2000 accident and, therefore, claimant should have been awarded a 16 percent permanent partial general disability for the permanent functional impairment to claimant's neck and right arm. Respondent also argues the Judge erred by failing to specifically find claimant's headaches are not related to the March 2000 accident or find that claimant concedes her headaches are not caused by her neck injury. Finally, respondent argues claimant should not be permitted to proceed in Docket No. 1,001,816 in which claimant alleges she sustained bilateral carpal tunnel syndrome in a separate accident while working for respondent.

Conversely, claimant contends the June 3, 2004 Award should be affirmed. Claimant argues she injured her neck in the March 6, 2000 accident, which is the subject of this claim, and that she developed bilateral carpal tunnel syndrome in a different manner, which is the subject of Docket No. 1,001,816. Claimant contends the Judge was correct in awarding her benefits for only a neck injury for the March 6, 2000 accident.

The issues before the Board on this appeal are:

1. What is the nature and extent of claimant's injury and disability due to the March 6, 2000 accident?
2. Did the Judge err by failing to address claimant's headaches?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and considering the parties' arguments, the Board finds and concludes the June 3, 2004 Award should be affirmed.

Respondent manufactures aircraft and has employed claimant since June 1988. On March 6, 2000, claimant experienced pain in her neck along with pain and numbness in her left upper extremity while installing composite material on an engine nacelle. Claimant described the accident, as follows:

We were laying [composite material] up an outer barrel, which is a female tool. You have to be on scaffolding to lay it up. You pick up the material, walk up the scaffolding, you lean out into a tool and you hang onto the material and then you have to throw the material into the air and extend your body out into the tool and hold it up. The other person wasn't over there, so I was holding it probably for 10, 15 minutes. My neck gave way, I guess. Both arms fell to my side, the material fell

down in the center of the tool. At that time the C5-6, I guess, discs exploded or whatever they did. They took me to medical.¹

After the accident, claimant immediately went to respondent's medical department. At that time, claimant reported pain and numbness in her left upper extremity with pain radiating into her neck.

Claimant continued working for respondent following the accident. Eventually, claimant was referred to a neurosurgeon, Dr. Eustaquio Abay. The doctor initially saw claimant in December 2000. And in late January 2001, the doctor operated on claimant's neck, performing a discectomy and fusing claimant's fifth and sixth cervical vertebrae.

The surgery did not resolve the symptoms claimant was then having in her neck and right arm. Accordingly, in April 2001, nerve conduction tests were performed that indicated claimant had bilateral carpal tunnel syndrome. Those tests did not indicate claimant had cervical nerve root irritation or radiculopathy.

Because claimant's symptoms continued despite surgery, claimant was referred to Dr. Philip R. Mills for additional treatment. Dr. Mills, who is board-certified in physical medicine and rehabilitation, first saw claimant in July 2001. According to the doctor's July 26, 2001 report, claimant's chief complaint at that time was pain in her shoulders, neck, arms and hands. According to the doctor, claimant also was complaining about numbness in her hands at their first visit, with the right hand being worse than the left. After their initial visit, Dr. Mills diagnosed (1) herniated cervical disc at C5-6, (2) right carpal tunnel syndrome that did not appear symptomatic, and (3) right frozen shoulder.

In August 2001, claimant resumed working for respondent in the same department when Dr. Abay released her to return to work. According to claimant, respondent is accommodating her by not requiring her to perform those duties she feels she cannot do.

Dr. Mills saw claimant again on September 5, 2001. The doctor's office notes from that date indicate claimant had returned to work performing composite lay-up work, which caused her hand and shoulder symptoms to worsen. According to the doctor, claimant's right carpal tunnel syndrome had progressed from being asymptomatic to becoming moderately severe. In his September 5, 2001 office notes, Dr. Mills stated:

Today I rechecked Mary Waggoner who is present with Melissa Frost, the case manager. Since I last saw Mary, she states that she has gotten worse with more hand pain and shoulder pain. She did return to work doing lay-up work and she describes this as laying material on a jib *[sic]*. She is smoothing material with her

¹ R.H. Trans. at 8.

hands over the top of the jig. She is using knives and cutting and stretching material tight. She states that the pain began immediately when she started the *[sic]* doing the job within about five minutes. In addition to the numbness which she had been having, she developed shooting pains into the palm. The patient states that while she got stronger with therapy, the mobility was worse.

. . . .

Physical Examination: Physical examination reveals decreased sensation in the thumb bilaterally as well as ulnar distribution bilaterally.²

Claimant returned to Dr. Mills in October 2001 after experiencing a good response to a steroid injection in her wrist. At that time, the doctor concluded claimant had reached maximum medical improvement regarding her neck but that she should be evaluated by a surgeon for her hand.

Claimant did consult with a hand surgeon. And in January 2002, Dr. J. Mark Melhorn performed carpal tunnel release surgery on claimant's right wrist.

In August 2002, when Dr. Mills next saw claimant, the doctor again diagnosed claimant as having a herniated cervical disc at C5-6 and right carpal tunnel syndrome post-release. The doctor concluded claimant was at maximum medical improvement and rated her as having a 15 percent whole body functional impairment due to the cervical injury and a six percent whole body functional impairment due to the right carpal tunnel syndrome, which combined for a 20 percent whole body functional impairment according to the American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.).

Dr. Mills last saw claimant in April 2003 and made his final diagnosis of herniated cervical disc post-surgery, right carpal tunnel syndrome post-release, bilateral shoulder pain, and myofascial type pain syndrome with muscle tension encephalgia. The doctor reiterated his opinion that claimant had sustained a 20 percent whole body functional impairment due to her work-related injuries. The doctor, however, testified that claimant probably had a five percent whole body functional impairment due to her neck before the March 2000 accident and, therefore, only 16 percent of claimant's present functional impairment was attributable to her more recent injuries.

Dr. Abay testified but he did not provide a functional impairment rating.

² Mills Depo., Ex. 1.

1. What is the nature and extent of claimant's injury and disability from the March 6, 2000 accident?

This is not claimant's first work-related injury. During the regular hearing, respondent asked claimant about an injury that occurred from December 1990 through May 1993. Claimant does not dispute that she saw a Dr. Eyster in 1990 for low back and neck pain and numbness in her hands. Neither does claimant dispute that the doctor performed tests that indicated possible bilateral carpal tunnel syndrome at that time. Claimant testified, in part:

Q. (Mr. Martens) Just one, okay. That date of accident was, again, let me go back and familiarize yourself with the time period, was a series of injuries December '90 through May of '93. Do you recall that?

A. (Claimant) Okay.

Q. Is that accurate?

A. Yes.

Q. You had a medical expert at that time who evaluated you at the request of your attorney for purposes of that workers' compensation settlement, and history taken was injuries received 12-90 through May 11, '93, was doing a lot of pushing and pulling with hands and carrying panels that weighed several hundred pounds to help other people.

THE COURT: What kind of an injury was it?

MR. MARTENS: I am going to get to that in just a second.

THE COURT: Let's find that out first.

Q. Do you recall complaining at that time that you had symptoms of carpal tunnel and that you had neck pain from that accidental injury? Perhaps I can refresh your recollection and it will speed your recollection. Do you remember seeing a Dr. Eyster back December of 1990 where he said that you were complaining of lower back and neck pain and that you had numbness in your hands and he did some tests on your hands that showed positive signs and that he concluded you had possible bilateral carpal tunnel syndrome and that he recommended that you have some evaluations of your neck also? Do you remember that?

A. No, I don't.

Q. If his records were to indicate that, would you dispute those records?

A. No, I don't dispute Dr. Eyster.³

The parties agree that claimant injured her neck working for respondent. And, as indicated above, the parties agree claimant's neck injury has created an additional 11 percent whole body functional impairment. But the parties cannot agree whether claimant should receive compensation in this claim for injuries to the upper extremities. In a somewhat unusual turn of events, claimant argues she is neither claiming nor entitled to receive benefits for her upper extremities in this claim. But respondent contends claimant should receive benefits for her upper extremities whether she wants them or not. Claimant notes that she has filed a separate claim for upper extremity injuries alleging a different date of accident and different mechanism of injury.

At the regular hearing, claimant limited her request for disability benefits arising from her neck injury only. Accordingly, the Judge ruled that the evidence presented at the regular hearing would be limited to claimant's neck injury.

The evidence establishes that claimant injured her neck in a specific accident on March 6, 2000, working for respondent. Claimant denies she injured her upper extremities in that specific accident and asserts no claim for workers compensation benefits for her upper extremities arising out of that accident. Accordingly, the Board concludes claimant's disability benefits are limited to the additional injury claimant sustained as a result of her neck injury only. Similarly, claimant does not contend her headaches are related to the March 6, 2000 accident and, therefore, no benefits should be granted for those.

Claimant does not purport to have a work disability (a permanent partial general disability greater than the functional impairment rating) in this claim. As claimant sustained an additional 11 percent whole body functional impairment due to the neck injury she received in the March 6, 2000 accident, claimant is entitled to receive benefits for an 11 percent permanent partial general disability.⁴

Respondent's argument that claimant has improperly bifurcated this proceeding is without merit. This claim and Docket No. 1,001,816, which addresses claimant's alleged upper extremity injuries and bilateral carpal tunnel syndrome, allege different accident dates and mechanisms of injury. In the other docket number, claimant must prove, among other facts, that she injured her upper extremities working for respondent in an accident other than the specific accident claimed in this proceeding, and prove the nature and extent of her injuries and disability from that other accident. On the other hand, respondent

³ R.H. Trans. at 30-32.

⁴ K.S.A. 1999 Supp. 44-510e.

is not precluded from arguing and presenting evidence in the other claim that claimant's upper extremity injuries actually occurred on March 6, 2000, or her injuries occurred in some other manner that would defeat claimant's recovery of benefits.

2. Did the Judge err by failing to address claimant's headaches?

When this claim was submitted to the Judge for decision, claimant had abandoned any contention that her headaches were related to the March 6, 2000 accident. At oral argument before this Board, claimant's attorney again advised that no claim was being made for headaches. Accordingly, claimant is not entitled to receive benefits for her headaches under either the June 3, 2004 Award or this Order and this issue is moot.

AWARD

WHEREFORE, the Board affirms the June 3, 2004 Award entered by Judge Clark.

IT IS SO ORDERED.

Dated this ____ day of October 2004.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Alexander B. Mitchell, II, Attorney for Claimant
Kim R. Martens, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director